

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. KENNETH J. NEILSON, Defendant.	MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S THIRD MOTION TO CONTINUE TRIAL AND EXCLUDING TIME Case No. 2:09-CR-286 TS
---	---

Defendant moves to continue the pretrial deadlines and the trial date for 120 days. This case was previously twice continued. Once, because the case was delayed by pro se filings by the defendant. The second time because all required discovery had not yet been obtained. Defendant's counsel represents that discovery has now been provided. It consists of many thousands of pages of material relating to the tax evasion charge. A jury trial is currently set for March 3, 2010. Due to a trial that is set for the end of January 2010, Defendant's counsel will be unable to start the necessary review of the documents until February 2010. Once counsel has read and reviewed the material, additional time is required for review of the material with his client. Counsel will be unable to determine if

pretrial motions should be filed until after he has reviewed the thousands of pages of material with his client. Accordingly, Defendant also seeks an extension of time to file pretrial motions. The Court finds that there is an unusual volume of material in the case. The Court finds that the case is complex due to the nature of the allegations in the Indictment as involving several entities. These findings, plus the fact that additional time is necessary for counsel to be able to review materials with Defendant, support Defendant's request for an extension of the time for filing pretrial motions. Therefore, the Court will grant that extension of time. Such a grant of time requested by the defendant "for the preparation of written pretrial motions" is automatically excludable under the Speedy Trial Act.¹ Thus, the time from the filing of the present motion to the extended deadline for filing pretrial motions will be excludable from the speedy trial calculation.

The Court further finds that to deny the requested continuance would deny counsel the time necessary for effective preparation of trial, taking into account his past due diligence in first obtaining the materials and future diligence in expeditiously reviewing them and preparing for trial. The Court further finds that the ends of justice served by granting the requested continuance of trial outweigh the best interest of the public and the Defendant in a speedy trial. It is therefore

ORDERED that Defendant's Motion to Continue Pretrial Deadlines and continue trial

¹*United States v. Mobile Materials, Inc.*, 871 F.2d 902, 913 -914 (10th Cir. 1989); See also *United States v. Medrano*, 2009 WL 4547801 *2 n.3 (10th Cir. Dec. 7, 2009) (noting that [t]he question whether an extension of time to file pretrial motions is automatically excludable under the STA is before the Supreme Court this term" in *United States v. Bloate*, 534 F.3d 893 (8th Cir.2008), *cert. granted* 129 S.Ct. 1984 (2009)).

(Docket NO. 28) is GRANTED. It is further


ORDERED that the time from the new motion deadline to the date of the new trial July 28, 2010, is excluded from the speedy trial calculation. It is further

ORDERED that the motion deadline is June 18, 2010, and the plea agreement deadline is July 20, 2010. It is further

ORDERED that no further continuances will be considered without a hearing.

DATED January 26, 2010.

BY THE COURT:



TED STEWART
United States District Judge